

Exhibit W

Second Amended Complaint

ELECTRONICALLY FILED

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Heidi Percy

County Clerk

Snohomish County, WASH

Case Number: 18-2-08480-31

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

8

9 SHELLEY S. HAWKINS,
10 individually and as assignee of
Edwin G. Miguel,

11 Plaintiff

12 v.

13 ACE AMERICAN INSURANCE
14 COMPANY, a foreign insurer;
EDWIN G. MIGUEL; FATEMAH
15 S. ALSUWAIDAN; and DOES
AND DOE INSURANCE
COMPANIES 1-5,

16 Defendants

17

№ 18-2-08480-31

SECOND AMENDED
COMPLAINT FOR NEGLIGENCE,
VIOLATIONS OF THE
WASHINGTON INSURANCE
FAIR CONDUCT ACT AND THE
DUTY OF GOOD FAITH AND
FAIR DEALING, BREACH OF
CONTRACT, AND OTHER
CLAIMS

18 COMES NOW the Plaintiff, Shelley Hawkins, individually and as assignee of Edwin
19 G. Miguel, for causes of action against the Defendants, and alleges as follows:

20 I. JURISDICTION

21 1.1 All events alleged herein occurred within the limits of Snohomish County,
22 Washington.

23 II. PARTIES AND VENUE

24 2.1 Plaintiff Shelley Hawkins is a resident of Snohomish County, Washington.

25 2.2 Upon information and belief, Defendant Edwin G. Miguel resides, and at all
26 times material hereto has resided, in Snohomish County, Washington.

27 SECOND AMENDED COMPLAINT FOR NEGLIGENCE,
28 VIOLATIONS OF THE WASHINGTON INSURANCE
FAIR CONDUCT ACT AND THE DUTY OF GOOD
FAITH AND FAIR DEALING, BREACH OF CONTRACT,
AND OTHER CLAIMS - 1

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Phone: (425) 453-0115/Fax: (425) 412-4060

1 2.3 Upon information and belief, Defendant Fatemah Alsuwaidan resides, and at
2 all times material hereto has resided, in King County, Washington.

3 2.4 At all times material hereto, Defendant Ace American Insurance Company, a
4 foreign insurance company, was a Pennsylvania corporation licensed to engage in the
5 insurance business within the State of Washington, and did in fact engage in insurance
6 business therein.

7 2.5 In Snohomish County, Washington, Defendant Ace American Insurance
8 Company (a) transacts business; (b) has an office for the transaction of business; (c) transacted
9 business at the time Plaintiff's cause of action arose; and/or (d) any person resides upon whom
10 process may be served upon Defendant Ace American Insurance Company.

11 2.6 There may be additional individuals, insurers and/or other entities whose
12 identification is as yet unknown, that at all times material hereto, may have contributed to
13 Plaintiff's alleged damages or otherwise be legally responsible for insuring and owing duties
14 to Edwin Miguel and failed to do so. Said entities, if any, are referred to herein as Does and
15 Doe Insurance Companies 1 through 5, and they will be added hereto as named defendants if
16 and when their true identities become known to Plaintiff.

17 || 2.7 Jurisdiction and venue are proper in this Court.

III. FACTS

19 3.1. On November 16, 2016, at the hour of approximately 3:15 p.m., Plaintiff
20 Shelley Hawkins was operating her vehicle in Lynnwood, Washington.

21 3.2 At or about this time, Defendant Fatemah Alsuwaidan was driving a vehicle
22 owned by and registered to PV Holding Corporation d/b/a/ Budget Rent A Car System, Inc.

23 3.3 At or about this time, Defendant Fatemah Alsuwaidan caused the vehicle she
24 was operating to touch the vehicle operated by the Plaintiff. Defendant Fatemah Alsuwaidan
25 was negligent in operating her vehicle and her negligence caused the incident described in this
26 paragraph.

28 SECOND AMENDED COMPLAINT FOR NEGLIGENCE,
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FAITH AND FAIR DEALING, BREACH OF CONTRACT,
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1 3.4 At or about this time, Defendant Edwin Miguel was driving a vehicle owned by
2 and registered to Sears Holdings Management LSE. This vehicle is correctly identified as a
3 2013 Chevrolet G1500 cargo van, Vehicle Identification Number 1GCSGAFX2D1166602.

4 3.5 At all times material hereto, Defendant Edwin Miguel was an employee of
5 Defendant A&E Factory Service, L.L.C. and/or Defendant Sears Holding Management LSE
6 and was operating the vehicle identified in the preceding paragraph while acting within the
7 scope of his employment and/or authority for or on behalf of Defendant A&E Factory Service,
8 L.L.C., and/or Defendant Sears Holding Management LSE as their employee and/or agent.

9 3.6 After the above-described impact caused by Defendant Fatemah Alsuwaidan,
10 Defendant Edwin Miguel caused the vehicle he was operating to crash into Defendant
11 Fatemah Alsuwaidan's vehicle, causing Defendant Fatemah Alsuwaidan's vehicle to crash
12 into the Plaintiff's vehicle and resulting in substantial injury and damages to Plaintiff.

13 3.7 Defendant Edwin Miguel was negligent in operating his vehicle and his
14 negligence caused the collision described above (hereafter, "the collision").

15 3.8 At the time of the collision, the vehicle operated by Defendant Edwin Miguel
16 was covered under a policy of liability insurance coverage issued by Defendant Ace American
17 Insurance Company to, upon information and belief, Sears Management LSE, Sears
18 Management Holding Corporation, and/or A&E Factory Service, Inc. as named insureds and
19 policyholder(s).

20 3.9 At the time of the collision, the vehicle operated by Defendant Edwin Miguel
21 was covered under a policy of liability insurance coverage issued by Defendant Ace American
22 Insurance Company and identified as policy number ISAH09044188.

23 3.10 Upon information and belief, at the time of the collision, the vehicle operated
24 by Defendant Edwin Miguel was also covered under a policy of liability insurance providing
25 excess or umbrella coverage in addition to what coverage amounts the primary policy
26 provided. The policy number of said excess or umbrella policy is currently unknown to

1 Plaintiff.

2 3.11 At the time of the collision, Defendant Edwin Miguel was a covered insured
3 driver under a policy of liability insurance coverage issued by Defendant Ace American
4 Insurance Company.

5 3.12 At the time of the collision, the policy of liability insurance coverage issued by
6 Defendant Ace American Insurance Company imposed upon said Defendant a contractual
7 duty to defend Defendant Edwin Miguel against any litigation Plaintiff brought against him as
8 a result of the collision.

9 3.13 The duty to defend provided under the policy of liability insurance coverage
10 issued by Defendant Ace American Insurance Company included a contractual obligation
11 upon said Defendant to pay attorney fees and court costs of Defendant Edwin Miguel in any
12 litigation Plaintiff brought against him as a result of the collision.

13 3.14 At the time of the collision, the policy of liability insurance coverage issued by
14 Defendant Ace American Insurance Company imposed upon said Defendant a contractual
15 duty to indemnify Defendant Edwin Miguel against damages he caused Plaintiff as a result of
16 the collision.

17 3.15 The duty to indemnify provided under the policy of liability insurance coverage
18 issued by Defendant Ace American Insurance Company included a contractual obligation to
19 pay the amount of any court judgment entered against Defendant Edwin Miguel in any
20 litigation Plaintiff brought against him as a result of the collision, plus interest on the
21 judgment.

22 3.16 Plaintiff's claim against Defendant Edwin Miguel arising from the collision is,
23 and at all material times was, covered by a policy of liability insurance coverage issued by
24 Defendant Ace American Insurance Company.

25 3.17 In 2017 and 2018, Defendant Ace American Insurance Company was aware
26 Plaintiff was making a claim for damages against Defendant Edwin Miguel arising from the

1 collision.

2 3.18 In 2017 or 2018, Defendant Ace American Insurance Company had actual or
3 constructive knowledge Plaintiff was making a claim for damages against Defendant Edwin
4 Miguel arising from the collision.

5 3.19 In 2017 and 2018, Defendant Ace American Insurance Company used
6 Sedgwick Claims Management Services, Inc. ("Sedgwick"), as its agent and/or claims handler
7 to manage its claims.

8 3.20 In 2017 and 2018, Defendant Ace American Insurance Company used
9 Sedgwick as its agent and/or claims handler to manage Plaintiff's claim for damages against
10 Defendant Edwin Miguel arising from the collision.

11 3.21 On January 15, 2018, an individual claims examiner, Janet Cozzone, was acting
12 on behalf of Sedgwick and Defendant Ace American Insurance Company and she sent
13 Plaintiff's attorney a letter dated January 15, 2018. That letter indicated, among other things,
14 that Sedgwick and Defendant Ace American Insurance Company assigned claim number
15 A1611205013-0004 to Plaintiff's claim for damages against Defendant Edwin Miguel, that
16 Plaintiff was to direct all correspondence and telephone calls concerning that claim to
17 Sedgwick, and that "Sedgwick manages claims for Ace American Insurance Company on
18 behalf of Sears Holdings Corporation." A true and correct copy of this letter is attached to this
19 Amended Complaint as Exhibit A.

20 3.22 Between November 7, 2017, and September 19, 2018, Plaintiff's attorney and
21 the claims handler(s) acting on behalf of Sedgwick and Defendant Ace American Insurance
22 Company exchanged multiple letters and/or e-mails concerning Plaintiff's claim for damages
23 against Defendant Edwin Miguel.

24 3.23 Before September 20, 2018, employees, agents, or claims handlers of
25 Defendant Ace American Insurance Company determined that Plaintiff's claim against
26 Defendant Edwin Miguel arising from the collision was a claim covered by a policy of

1 liability insurance issued by Defendant Ace American Insurance Company.

2 3.24 Before September 20, 2018, Defendant Ace American Insurance Company
3 acknowledged and accepted liability coverage of the collision.

4 3.25 Before August 1, 2021, Defendant Ace American Insurance Company never
5 determined that Plaintiff's claim against Defendant Edwin Miguel arising from the collision
6 was not covered by a policy of liability insurance it issued.

7 3.26 Before September 1, 2021, Defendant Ace American Insurance Company never
8 notified Defendant Edwin Miguel that Plaintiff's claim against Defendant Edwin Miguel
9 arising from the collision was not covered by a policy of liability insurance it issued.

10 3.27 Before September 1, 2021, Defendant Ace American Insurance Company never
11 notified Plaintiff that her claim against Defendant Edwin Miguel arising from the collision
12 was not covered by a policy of liability insurance it issued.

13 3.28 Before September 20, 2018, Defendant Ace American Insurance Company or
14 its employees, agents, or claims handlers determined that Defendant Edwin Miguel was
15 factually and legally responsible for causing the collision.

16 3.29 Before September 20, 2018, Defendant Ace American Insurance Company or
17 its employees, agents, or claims handlers received Plaintiff's pertinent medical and other
18 records and had actual knowledge of Plaintiff's injuries and damages resulting from the
19 collision.

20 3.30 Before September 20, 2018, Defendant Ace American Insurance Company or
21 its employees, agents, or claims handlers determined that as a direct and proximate result of
22 the negligent conduct of Defendant Edwin Miguel, Plaintiff was injured in the collision and
23 sustained damages.

24 3.31 On September 20, 2018, Plaintiff commenced a lawsuit against Defendant
25 Edwin Miguel for damages arising from the collision.

26 3.32 Before January 1, 2021, employees, agents, attorneys, or claims handlers for

1 Defendant Ace American Insurance Company had actual or constructive knowledge that
2 Plaintiff had commenced litigation for damages arising from the collision with Defendant
3 Edwin Miguel.

4 3.33 Before January 1, 2021, Defendant Ace American Insurance Company had
5 actual or constructive knowledge that Plaintiff had commenced litigation for damages arising
6 from the collision with Defendant Edwin Miguel.

7 3.34 Defendant Ace American Insurance Company failed or refused to provide
8 Defendant Edwin Miguel any defense to Plaintiff's litigation at any time before June 23, 2021.

9 3.35 Defendant Ace American Insurance Company's acts and omissions in failing or
10 refusing to defend Defendant Edwin Miguel against Plaintiff's litigation were frivolous,
11 unreasonable, or unfounded, constituted an unreasonable denial of coverage, and constituted
12 an unreasonable denial of the payment of benefits.

13 3.36 As a result of Defendant Ace American Insurance Company's failure or refusal
14 to provide a litigation defense for Defendant Edwin Miguel, his personal assets were exposed
15 and at risk of execution and collection by Plaintiff.

16 3.37 As a result of Defendant Ace American Insurance Company's failure or refusal
17 to provide a litigation defense, said Defendant has caused other harms and damages.

18 3.38 As a result of Defendant Ace American Insurance Company's failure or refusal
19 to provide a litigation defense and the risks this created for Defendant Edwin Miguel, he and
20 Plaintiff entered into a Settlement Agreement with Assignment of Rights and Covenants
21 (hereafter, the "Settlement Agreement") and agreed to entry of a proposed Superior Court
22 judgment against Defendant Edwin Miguel in the principal amount of \$1,500,000, with
23 accrual of interest at 12 percent, compounded annually, subject to this Court's approval. A
24 true and correct copy of those parties' Settlement Agreement is attached to this Amended
25 Complaint as Exhibit B. Under the Settlement Agreement, Defendant Edwin Miguel assigned
26 his claims of insurance bad faith and other causes of action against his insurer to Plaintiff and

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28 SECOND AMENDED COMPLAINT FOR NEGLIGENCE,
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1 Plaintiff agreed not to execute against Defendant Edwin Miguel's personal assets.

2 3.39 As a result of the Settlement Agreement, Plaintiff is Defendant Edwin Miguel's
3 assignee of all claims and causes of actions he could assert against Defendant Ace American
4 Insurance Company. Plaintiff thus has standing and is the real party in interest to assert such
5 claims and causes of actions asserted herein against Defendant Ace American Insurance
6 Company.

7 3.40 On July 21, 2021, this Court determined that the amount of \$1,500,000 was a
8 reasonable settlement amount between Plaintiff and Defendant Edwin Miguel. This Court
9 subsequently entered a Judgment against Defendant Edwin Miguel in the principal amount of
10 \$1,500,000, with interest to accrue at 12 percent, compounded annually.

11 3.41 The principal Judgment amount of \$1,500,000 plus interest is the amount of
12 insurance benefits Defendant Ace American Insurance Company owes and has been under an
13 ongoing obligation to pay Plaintiff on behalf of Defendant Edwin Miguel.

14 3.42 More than 20 days before the filing of this Amended Complaint, Defendant
15 Ace American Insurance Company was properly served with the required Insurance Fair
16 Conduct Act 20-day notice in compliance with RCW 48.30.015, in which said Defendant was
17 requested to cure all of the following within 20 days:

- 18 • Comply with duties under the contract and applicable law.
- 19 • Conduct a reasonable investigation.
- 20 • Attempt in good faith to effectuate fair and equitable settlements of the
claims.
- 21 • Pay the reasonable amount of damages and other amounts caused.
- 22 • Adopt and implement reasonable standards for the prompt investigation of
claims arising under insurance policies.
- 23 • Comply with all insurance regulations.
- 24 • Refrain from compelling your insured to submit to litigation by offering
substantially less than the amounts ultimately recovered in such actions or
proceedings.

25 3.43 Defendant Ace American Insurance Company failed to resolve the basis for
this action within this 20-day period after such notice.

26 3.44 As of the date of this Amended Complaint, Defendant Ace American Insurance

1 Company has refused to pay any part of the reasonable amount of the damages and other
2 amounts caused and owing under the Judgment described above.

3 3.45 Defendant Ace American Insurance Company violated insurance industry
4 standards and customs, state insurance laws and regulations, and the terms of the insurance
5 contract.

6 3.46 On November 11, 2021, in the case of *Hawkins v. Ace American Insurance*
7 *Company et al.*, U.S. District Court for the Western District of Washington cause number
8 2:21-cv-01459-RAJ-BAT, Defendant Ace American Insurance Company filed its Answer
9 and Affirmative Defenses to Plaintiff's Corrected Amended Complaint. On November 11,
10 2021, said Defendant also served its Answer on the attorneys of record for Plaintiff and
11 Defendant Edwin Miguel.

12 3.47 In its Answer described in the preceding paragraph, Defendant Ace American
13 Insurance Company denied insurance coverage of the Plaintiff's Judgment against Defendant
14 Edwin Miguel.

15 3.48 Defendant Ace American Insurance Company's denial of insurance coverage in
16 its Answer as described in the preceding paragraph, was the first time Defendant Ace
17 American Insurance Company asserted in writing to Plaintiff or to Defendant Edwin Miguel
18 that it was denying coverage of Plaintiff's Judgment against Defendant Edwin Miguel.

19 3.49 As of the date below of this Second Amended Complaint, Defendant Ace
20 American Insurance Company continues to deny insurance coverage of the Plaintiff's
21 Judgment against Defendant Edwin Miguel and has refused demands to pay said Judgment.

22 **IV. NEGLIGENCE CLAIM AGAINST DEFENDANTS MIGUEL AND ALSUWAIDAN.**

23 4.1 Plaintiff reincorporates Paragraphs 1.1 through 3.49 above.

24 4.2 As a result of Defendant Miguel's and Defendant Alsuwaidan's negligence, the
25 Plaintiff was injured.

1 **V. CLAIMS AND ACTIONS AGAINST DEFENDANT ACE AMERICAN**
2 **INSURANCE COMPANY.**

3 5.1 Plaintiff reincorporates Paragraphs 1.1 through 4.2 above.

4 5.2 **Breach of the Washington Insurance Fair Conduct Act and Insurance**
5 **Regulations.** Defendant Ace American Insurance Company's actions, including but not limited
6 its violation of the duty to defend Defendant Miguel, violated the Insurance Fair Conduct Act,
7 Chapter 48.30 RCW, and Washington Administrative Code regulations including the Unfair
8 Settlement Practices Act as set forth in WAC 280-30 et seq. as well as other laws or regulations.
9 Said Defendant's breach and violations proximately caused harm and damages.

10 5.3 **Breach of Duty of Good Faith and Fair Dealing.** Defendant Ace American
11 Insurance Company's actions are in violation of RCW 48.30.010 and its common law duties of
12 good faith and fair dealing requiring that all insurer actions be actuated by good faith, to abstain
13 from deception, and practice honesty and equity in all matters related to the business of insurance.
14 Said Defendant's breach and violations proximately caused harm and damages.

15 5.4 **Breach of Contract.** Defendant Ace American Insurance Company's actions are
16 in violation of the express or implied terms and conditions of the insurance contract and/or
17 reasonable expectations of its insureds as to the terms and conditions of the insurance policy.
18 Said Defendant's breach and violations proximately caused harm and damages.

19 5.5 **Negligence.** Said Defendant's breach and violations proximately caused harm and
20 damages.

21 5.6 **Declaratory Relief.** The policy of liability insurance coverage issued by
22 Defendant Ace American Insurance Company provides coverage of the Judgment against
23 Defendant Edwin Miguel described above in paragraphs 3.40 and 3.41. Plaintiff is entitled to
24 declaratory relief that includes an order of coverage and entry of judgment against Defendant Ace
25 American Insurance Company.

26 **VI. NOTICE REGARDING PUNITIVE DAMAGES.**

1 6.1 In the handling of the insurance claim, Defendant Ace American Insurance
2 Company has acted with bad faith or outrageous conduct under the laws of the State of
3 Pennsylvania, the state where said Defendant is incorporated or where the decisions, policies or
4 acts were decided. Plaintiff is entitled to punitive damages. 42 Pa. C.S. Section 8371.

DEMAND FOR RELIEF.

6 The Plaintiff requests that relief and judgment be entered as follows:

1. Awarding special and general damages in an amount to be proven at trial;
2. Awarding fixed and actual damages against Defendant Ace American Insurance Company in the underlying principal judgment amount against Defendant Edwin Miguel of \$1,500,000 plus prejudgment interest at the rate of 12 percent, compounded annually, all trebled pursuant to the Washington Insurance Fair Conduct Act;
3. Awarding additional actual damages for each violation by Defendant Ace American Insurance Company of the Washington Insurance Fair Conduct Act;
4. Awarding trebling of all actual damages caused by Defendant Ace American Insurance Company of the Washington Insurance Fair Conduct Act and other violations;
5. Awarding punitive damages of \$25,000,000 against Defendant Ace American Insurance Company under Pennsylvania law;
6. Awarding a declaratory judgment that Defendant Ace American Insurance Company and its policy of liability insurance provide coverage including coverage by estoppel of the Plaintiff's claims and Judgment against Defendant Edwin Miguel, and for entry of judgment thereon against Defendant Ace American Insurance Company plus interest;
7. Awarding costs, including reasonable attorney's fees; and
8. Awarding any further relief that this Court may deem just and proper.

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3 DATED this 26th day of August, 2022.

4 Law Offices of Terence F. Traverso, P.S., by



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6 Terence F. Traverso
7 WSBA #21178
8 Attorney for Plaintiff

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